



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

FEBRUARY 22, 2011

PRESENT: Mueller, Moniz, Tanda, Koepp-Baker, Benich

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe

Chair Mueller called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Planning Manager, Rowe certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

MINUTES:

February 8, 2011 The February 8, 2011 Minutes will be included in the March 8, 2011 Meeting packet.

PUBLIC MEETING/WORK SHOP:

1) DRAFT SANTA CLARA VALLEY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY

A request to review and provide comment on the Draft Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (Plan) and Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS).

Rowe introduced Ken Shrieber, Program Manager for the Santa Clara County Habitat Plan.

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CONSERVATION

PLAN:

Schrieber appeared and presented the Habitat Conservation Plan.

Moniz: Can you explain more about how much the plan will cost?

Schreiber: The development fees are dedicated. The land acquisition by local agencies would be from existing sources and would often be matched by state and federal acquisition grants. General Funds are not to be used for this plan.

Moniz: If it doesn't come out of the Morgan Hill General Fund, where does it come from?

Schreiber: County parks funds come out of the park charter fund. Open Space Authority has its own funding source. Mitigation funding comes from impact fees. Land Management will come from development impact fees.

Koepp-Baker: What comprises the endowment fund?

Schrieber: 19 percent of the impact fees from mitigation will be set aside and then it will earn interest, which will add up over time.

Tanda: How much open space will be new acreage?

Schreiber: Santa Clara County has a great deal of open space that has already been set aside. The reserve system includes 58,000 acres. Of that, 45 will be new acquisition. The remaining 13,000 are existing.

Tanda: You will only be acquiring land from willing property owners?

Schreiber: Absolutely.

Tanda: Why is Henry Coe park not included in the acreage?

Schreiber: It was decided that they wouldn't participate for various policy reasons.

Tanda: If Henry Coe decided to participate, how much money would that save?

Schreiber: Very little, because they have small impacts. However, one of the reasons we wanted to include them was for "connectivity," to create movement corridors. It's good for species in the short term, and it's the best plan biologists can think of to deal with global warming.

Tanda: How is it that Henry Coe has such little impact on our plan? What if the park were sold to a private party and they decided to develop it? Wouldn't it then become a large impact?

Schreiber: It could. We thought it was a good idea to get them into the plan and pushed for it all the way, but it really became a policy issue for state parks. They don't feel they have the option to foreclose active recreation.

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Mueller: We're not going to be able to change state policy before the implementation of this plan. It doesn't mean things might not change in the future.

Tanda: In trying to come up with almost a billion dollars, we need to have this question resolved.

Benich: I would hate to see this plan get delayed. It's been a long time just to get to this point.

Tanda: So Zone B, which is mostly Morgan Hill, would have to pay around \$13,000 per acre in mitigation fees? I don't understand why this reservation of land has to fall on locals only. Even if only a portion of Henry Coe were set aside for the Habitat Conservation Plan (HCP), that would take some of the burden off Morgan Hill property owners.

Schreiber: Part of the public policy tradeoff is that some projects might not encounter endangered species, but they'll have to pay fees anyway. But for those that do, this will streamline the process and make it much easier. It might take 3-4 years to get permits, instead of much longer.

Benich: Once this plan gets approved, would new projects reference this plan, pay their fees and then not have to do their own studies?

Schreiber: Correct. The plan doesn't approve any projects, but new projects would refer to it and they would know what all their conditions would be at the outset. There are projects that would be exempt from this plan, such as additions, projects on parcels less than ½ acre and projects too difficult to include.

Mueller: How will West Llagas get treated?

Schreiber: Is it fish bearing?

Rowe: No.

Schreiber: Then its setback would be 35 feet.

Mueller: If that's not possible because of existing development, what would happen?

Schreiber: You'd have to apply for a variance.

Mueller: What zone is most of Morgan Hill?

Schreiber: Zone B mostly, which carries a fee of \$13,750 per acre. If it's an undeveloped property larger than ½ acre and surrounded by development, then it would be Zone C.

Mueller: Let's assume we have a project that's over 100 acres, it's 75 percent built out, but there are no roads. Are you going to assess it on the whole project or just on

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the remainder land?

Schreiber: Just the remainder land.

Koepp-Baker: So the critical factor is whether or not they've pulled permits?

Schreiber: That is correct.

Koepp-Baker: So projects that are already in the pipeline would still pay these fees if they don't have permits yet?

Schreiber: Yes. It's like school district fees. They can change their fee schedule any time prior to permit issuance.

Mueller: On the Vehicle Emission Fee, if you do it just on vehicle trips, you're going to end up collecting multiple times. For example if you collect on the residence, and you collect on passerby trips for a shopping center, then you're, in effect, collecting multiple times for one car when it's basically one trip.

Benich: You're right, and we should get rid of this charge all together. Especially, since cars in the future might not even give off nitrogen.

Schreiber: We are required to reassess the fee every five years.

Koepp-Baker: There is really no way to calculate vehicle trips. It would make more sense to charge a flat fee based on the number of garage units.

Mueller called for a break at 8:10 pm and reconvened 8:20 pm.

Schreiber: This is an insurance policy. It locks into place for 50 years the current endangered species regulations. The permitting requirements are likely to become more difficult because more species will be added, and historically it has gotten more difficult as time passes—oftentimes because of lawsuits. In this case the Habitat Plan would prevail and provide that level of certainty. One thing to remember is that if a plan isn't in place it doesn't mean the issues go away.

Mueller opened the floor to public comment.

Dick Oliver of Dividend Homes appeared: It is true that there is a significant benefit to implementing a Habitat Conservation Plan. We had experience with this on a project in Gilroy. It ended up costing us over \$3,000,000 and threw our project into the downside of the economy where we sold homes for 30 percent less. But in Morgan Hill there are four classes of property that need to be considered: 1) Projects with recorded final maps but no building permits. Are those exempt if their lots are less than ½ acre but there is a group of lots? 2) Projects with recorded development agreements, which are supposed to give developers vested rights. If that is true, can a county agency now impose a fee that we hadn't planned on, putting us in an even more difficult situation to make our commitments? 3) There are projects without development agreements but with allotments. The first two categories have already done their environmental work and have shown that they

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have no environmental issues. Could it be requested of the county that those be exempt? 4) What about projects with a creek? Would fees need to be paid on the entire site, or just on the property within 35 feet of the creek? That would be a huge difference in the acreage and therefore the amount of fees. This plan has significant impact on developers and the county needs to know that.

Meagan Beaver, a DeAnza College student, appeared: A lot of the discussion tonight has revolved around development and money. That is important, but I have a young child and it is important to preserve wildlife and wetlands. Sometimes we have to drive a long distance to get to quiet, pristine areas. You can't expect animals like salamanders and small foxes to travel 50 miles extra to get to new habitat, or water sources or mates. I would like to request that the build out of area 8 (Coyote Valley) be postponed for as long as possible to give the animals more time to move and adapt.

Mueller closed the floor to public comment.

Benich: I think conceptually this is a good way to go, although it will raise the price of houses over time. Page 5 of the staff report identifies activities not covered by the plan. What is this new highway between I-5 and U.S. 101?

Schreiber: This process has been going on a long time. The idea of that road materializing, which was proposed by Congressman Pombo, is remote, but since it was identified it has been called out as not being covered by the plan.

Benich: The plan talks about the 43,000 acres of the reserve system. Where is that land going to be?

Schreiber: The land would be from the dark gray areas, large amounts of acres like Coyote Ridge, where species can be moved and managed.

Benich: So it would all be within Santa Clara County.

Schreiber: Yes, it has to be within the permit area of Santa Clara County.

Benich: Would the \$938 million dollars mentioned be over the 50 years?

Schreiber: Yes, the most complicated, in-depth cost model ever attempted with a habitat plan was done. We tried to be very conservative so that there wouldn't be unidentified or underestimated costs.

Mueller: Is that in present dollars?

Schreiber: Yes, it's 2010 dollars. Inflation is not calculated. Monterey County actually saw their fees drop in the first couple of years, because their costs went down.

Moniz: When there are wetlands, what is the scope of a permit? Is it all or part of a property? When would fees be collected?

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Schreiber: If you stay out of the wetlands, you wouldn't be subject to wetland fees. If you stay out of the setback of a stream, you wouldn't be paying wetland impact fees. If you have a site with a pond and you're inside the General Plan designated existing or future urban area, you would pay a fee on all of the site, but if you're in the non-urban area you would not pay a wetland fee. I will need to get back to you on whether you'd pay a fee on all of the acres if you avoid the pond.

Moniz: If I have a stream going through the property and I have to re-vegetate, do I pay a fee on that?

Schreiber: I'll have to check on that?

Tanda: Why wasn't CalTrans part of this partnership?

Schreiber: 1) Most work on CalTrans routes has been done through the EPA, so they have been covered that way. 2) The bureaucracy of dealing with CalTrans was so formidable that it became too tough.

Tanda: If State Parks decided that a portion of Henry Coe could be added later, would a new EIR be triggered?

Schreiber: It would require additional work. I'm not sure if it would trigger a new EIR.

Tanda: Regarding projects not covered by the plan, would projects such as agricultural be exempted?

Schreiber: Projects that need grading permits or building permits would be subject to the plan. But agricultural projects expanding their row crops would be exempt.

Tanda: And that is different than projects such as High Speed Rail that are exempt from this plan, but would still have to get their own permits?

Schreiber: Correct.

Tanda: As Mr. Oliver pointed out, there are projects that have already gotten environmental clearance. It seems very unfair that they should have to pay this fee. It also seems unfair that in many other cities, such as Palo Alto and Saratoga, where a developer already has an EIR, they would not have to pay these fees. It puts a larger burden on the South County cities. It's unfair from a jurisdictional standpoint.

Schreiber: This is viewed as Phase I of several. This will need to be looked at again after this process runs its course. Stanford is doing an environmental because they have salamander issues. But you're right.

Tanda: Everything I've heard is for cooperation between agencies. This is creating a new agency. It seems like we're actually creating more bureaucracy, rather than consolidating. It doesn't seem like a good way to go.

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Schreiber: The message from elected officials is that the Joint Powers Authority (JBA) have minimum staff, maximum contract and use existing resources.

Mueller: There is a chapter on impacts, and I also read in the staff report on Page 4 that there is a maximum impact that will be allowed. It appeared that the fish and game agencies had a chance to determine what their impact would be. Does that mean that there are potentials for the city to be told they can't build, but then they could still have to pay the money?

Schreiber: The maximum impact is identified in Chapter 2. The annual monitoring and the 5 year reviews are meant to address that type of issue.

Mueller: Chapter 4, page 68, talks about the nitrogen take. It shows Morgan Hill's nitrogen impact to be twice that of Gilroy. I don't understand that. Gilroy has 10,000 more people than Morgan Hill. If it's based on vehicle trips, how can we have twice as much?

Schreiber: I'm not sure either. I'll have to look at that.

Mueller: Regarding affordable housing, could these fees be a deterrent to the housing element? I didn't see anything that addresses the impact of adding fees to affordable housing. It seems that will need to be looked at.

Schreiber: That's a good point.

Mueller: Jim, for City Council, could you summarize our areas of concern so they can have their discussion in March?

Jim: Yes.

Koepp-Baker: When we have projects in the pipeline with plans in place through 2013. If this takes place before then, do we suddenly add fees to those developments?

Rowe: As it stands now, yes. But the discussion has come up and will need to be examined at future meetings.

Mueller closed Agenda Item 1.

CONTINUED **PUBLIC** **HEARING:**

2) SUBDIVISION, **SD-09-08/** **DEVELOPMENT** **AGREEMENT,** **DA-09-06/** **ZONING** **AMENDMENT,** **ZA-09-09:**

A request for approval of a precise development plan, Development Agreement and subdivision approval on a 4.73 acre site located on the south side of East Central Avenue between Calle Mazatan and Butterfield Boulevard. The proposed project is a 32 lot single family residential development. The proposed zoning amendment is from R-2(3,500)/RPD, Multi-Family Low Residential Planned Development to R-1 (4,500)/PD, Single Family High Planned Development zoning district. (APN 726-22- 056)

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CENTRAL-UCP:

Rowe presented his staff report and mentioned that this is not a continuation of the previous Cerro Verde project, but is a new project with a separate HOA.

Benich: I'm concerned about the changes we're being asked to approve. The revisions are quite a bit different than the original submittal.

Mueller: This project commits to BMR's, right? But I didn't see deadlines anywhere. And they're also asking for BMR reductions?

Rowe: Correct, but the BMR reduction plan only applies to allocations for Fiscal Year 09/10. We might look at expanding that for projects that have applied more recently, but right now it's only up through FY 09/10. The applicant did request an 18 month extension. Staff is comfortable with a 12 month extension.

Mueller opened the floor to public hearing.

Scott Schilling of UCP and Benchmark Communities appeared: We have put a significant amount of thought and planning into making the project transition between the existing projects and still meet the R1-4,500 standards. I have several things I'd like to review: Regarding pg. 2 of the staff report, it talks about the proposed driveway approach meeting city standards. I would request that the language be changed to say, "a design acceptable to the public works department," to allow us more flexibility. Also, we have spent a lot of time designing this project to a 57 percent floor area ratio. We believe we were told that 57% was good. I feel that changing to a 56 percent is a hardship and does not create a better product. I would request your consideration on that point.

Tanda: Could you clarify the ratios?

Michael Cady of UCP appeared: Calle Cerro to the south is a 59% FAR. Viento to the north is 66% FAR. The plans you're looking at right now show 59% FAR for this project, but we have agreed to a 57%. We did not know it was 56% percent until we read the staff report.

Mueller: Page 2 of the staff report talks about four models, but the details only show three. How many are there?

Cady: We have two duet types (three on a corner and one facing forward) but the floor plans area basically the same, and three single family detached plans. We're counting that as four models.

Schilling: I'm looking at the new standard conditions on pg. 12. I would again like to change the language to say, "a design acceptable to the public works department." On pg 13 I have a concern with the language regarding collection of fees, and that is that it doesn't reflect that some fees are deferred to final. I would like to see the language changed to something like, "fees must be paid according to current procedures." Under the Housing Division on pg 13, we would like the current BMR exemption language that applies for FY 09/10 to be extended to these allocations. Exhibit C, pgs. 2 and 4, refer to Measure C fees. The language is not reflective of what we have typically been allowed to do. To require fees at

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recording of Final Map makes it extremely costly to a project and eliminates the ability to go to a project as chosen by Public Works. Many items can be done while the project is under construction and if they're not, then fees can be collected prior to Certificate of Occupancy. If we pay the fees to Public Works at Final Map, then those fees are gone and we lose the ability to actually do a Public Works project.

Mueller closed the floor to public comment.

Mueller: I thought we had a policy in place, under the current economic conditions, that certain things were delayed from permit issuance to Certificate of Occupancy.

Rowe: So you're requesting that the standard language be changed to reflect current practices?

Mueller: Yes, I think that would require some language change.

Mueller: What about the BMR reduction language? That can't be as an individual request. That would have to be a policy change?

Rowe: Correct. One of the proposed items in the work plan is to consider expanding the BMR reduction program to include projects with fiscal allocations beyond FY 09/10. If Planning Commission concurs with that, then Council will act on it in the next couple of months. But I don't think you can apply that right now to an individual project.

Mueller: What about the cul de sac design? Would you have an issue changing the language to say something like, "designed to city standards or an alternative design acceptable to the Public Works department?"

Rowe: No, that would be fine.

Mueller: What about the FAR?

Rowe: This is similar to Jasper Park. The zoning is intended to be a max of 52% FAR. We deviated from that so that project could transition between the existing developments. This is only 1% difference from what we're recommending.

Moniz: So everyone could agree on 57%?

Rowe: Staff's recommendation is 56%, but it's up to your discretion.

Koepp-Baker: I think we're duty bound to accept 57%, if the applicant feels that that's what was decided upon during discussion with staff.

Mueller: The one issue with going forward is that we don't have a precise plan to look at, so we'd be approving a plan without actually seeing it.

Benich: Yes, and I have a problem with that.

Koepp-Baker: Jim, are you happy with the repeat factor?

Koepp-Baker: Staff hasn't had a chance to look at it in that amount of detail, but they have committed to it.

Tanda: What is the rationale for going above the maximum FAR?

Rowe: Making the project fit between already existing developments.

Mueller: In the future the R1-4,500 projects should all meet the standard. There shouldn't be exceptions. These two projects were different because of existing development on both sides.

Koepp-Baker: I think we should allow them to move forward.

Benich: I'm not comfortable without more time to review all these changes.

Mueller: I would like to see the documentation more complete, but I believe for tonight we can move forward.

Moniz disclosed that he met with the applicant earlier in the day.

COMMISSIONERS MONIZ AND KOEPP-BAKER MOTIONED TO APPROVE THE RESOLUTION WITH A CHANGE TO A 57 PERCENT FAR IN SECTION 6.

THE MOTION PASSED (4-0-1-0) WITH THE FOLLOWING VOTE:
AYES: KOEPP-BAKER, MONIZ, MUELLER, TANDA;
NOES: NONE;
ABSTAIN: BENICH;
ABSENT: NONE.

COMMISSIONERS MONIZ AND TANDA MOTIONED TO APPROVE THE CONDITIONS OF APPROVAL WITH CHANGES TO THE LANGUAGE UNDER THE FIRE SECTION REGARDING THE DESIGN OF THE CUL DE SAC

THE MOTION PASSED (4-0-1-0) WITH THE FOLLOWING VOTE:
AYES: KOEPP-BAKER, MONIZ, MUELLER, TANDA;
NOES: NONE;
ABSTAIN: BENICH;
ABSENT: NONE.

COMMISSIONERS MONIZ AND KOEPP-BAKER MOTIONED TO APPROVE THE CONDITIONS OF APPROVAL WITH CHANGES TO THE LANGUAGE UNDER THE STANDARD CONDITIONS TO ALLOW FEE DEFERRAL ACCORDING TO COUNCIL POLICY.

THE MOTION PASSED (4-0-1-0) WITH THE FOLLOWING VOTE:

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**AYES: KOEPP-BAKER, MONIZ, MUELLER, TANDA; NOES: NONE;
ABSTAIN: BENICH; ABSENT: NONE.**

ANNOUNCEMENTS /COMMISSIONER IDENTIFIED ISSUES

Upcoming actions will be the conditional use permit for CVS Pharmacy; the two projects (E. Dunne-Mendoza and Monterey-Liou) that were asked to appear before the Planning Commission regarding their inactivity; and appointing a subcommittee to review the RDCS Criteria. One additional announcement is that there will be another public meeting on the HCP on Wednesday, March 9.

Benich: When will we see the final on the CIP?

Rowe: That will be the beginning of April.

Mueller: Regarding the work plan, I thought we were asked to look at the RDCS fees and make it part of this budget cycle.

Rowe: Another recommendation was not to do that. But you can include it in your work plan.

Benich: I had a member of the public complain to me about a fee to appear before the Commission. He said it was exorbitant. I was wondering if we should include that in our review.

Rowe: Those are fees that are set after doing a fee study. The Council policy has been that those fees should be based on a full cost recovery because the services being requested are not those of the general public, so they should be paid fully by the applicant.

CITY COUNCIL REPORTS

None.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Mueller adjourned the meeting at 9:02 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician